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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,479	02/11/2005	Michael Menth	0119010-00104	6955
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K&L Gates LLP P.O. BOX 1135 CHICAGO, IL 60690			EXAMINER SIDDIQI, MOHAMMAD A	
			ART UNIT 2454	PAPER NUMBER
			MAIL DATE 03/26/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/524,479

**Applicant(s)**

MENTH, MICHAEL

**Examiner**

MOHAMMAD A. SIDDIQI

**Art Unit**

2454

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02/11/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 04/04/2005, 02/11/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-31 are presented for examination. Claims 1-11 have been cancelled.

#### ***Double Patenting***

2. Claims 12- 31 of copending application No.12/111,681 contains every element of claims 12-31 of the instant application and as such anticipates claims 12-31 of the instant application. Claims 12-31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. application 12/111,681. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the claims of the patent and the instant application are drawn towards A method for limiting traffic in a packet-oriented network having a plurality of links, the method comprising: performing two admissibility checks for a group of data packets of a flow to be transmitted via the network, wherein the first admissibility check is carried out using a limit value for the traffic routed via the network ingress node of the flow, wherein the second admissibility check is carried out using a limit value for the traffic routed via the network egress node of the flow, and wherein

transmission of the group of data packets is not permitted, if the transmission would result in traffic exceeding one of the two limit values. A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 12-31 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a

different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The claimed method including steps of performing two admissibility checks and restricting transmission based on the value is broad enough that the claim could be completely performed mentally, verbally or without a machine nor is any transformation apparent. A method claim to be statutory the claim must be tied to a particular machine in a significant manner or have a significant transformation of an article to a different state or thing. A particular machine is a machine that is not every machine and an example of an insignificant tie would be adding a computer display to a manual process.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 12-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Kadambi et al. (7,197,044) (Hereinafter Kadambi).

7. As per claim 12, Kadambi discloses a method for limiting traffic in a packet-oriented network having a plurality of links, the method comprising:

performing two admissibility checks for a group of data packets( 20a, fig 8, col 17, lines 23-35) of a flow to be transmitted via the network (ingress and egress sub module, 20 a, fig 8, col 17, 35-64) wherein

the first admissibility check is carried out using a limit value for the traffic routed via the network ingress node of the flow (elements of fig 12, col 18, lines 5-32), wherein

the second admissibility check is carried out using a limit value for the traffic routed via the network egress node of the flow (elements of fig 12, col 18, lines 5-32), and wherein

transmission of the group of data packets is not permitted (20a, fig 8), if the transmission would result in traffic exceeding one of the two limit values (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

8. As per claim 13, Kadambi discloses limit values are determined for all network ingress nodes and network egress nodes for the traffic routed via the respective nodes (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

9. As per claim 14, Kadambi discloses a relationship is established between the limit values for the traffic routed via network ingress nodes or network egress nodes with the traffic volume on the links of the network (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32), and wherein the limit values for the traffic routed

via the network ingress nodes or network egress nodes are determined using values for maximum traffic volume on the links of the network (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

10. As per claim 15, Kadambi discloses determining the proportional traffic volume via individual links of the network for pairs of network ingress nodes and network egress nodes; and establishing the relationship between the limit values for the traffic routed via the network ingress nodes or network egress nodes with the traffic volume on links of the network using the values for proportional traffic volume via the individual links of the network (ingress and egress sub module, 20 a, fig 8, col 13, lines 54-67; col 17, 35-64; col 18, lines 5-32).

11. As per claim 16, Kadambi discloses a relationship is established between the traffic volume between pairs of network ingress nodes and network egress nodes and the traffic volume on links of the network using inequations (col 29, lin1 42- col 30 line 7), wherein an optimization method for the traffic volume on links of the network is implemented (col 7, lines 40-51), wherein the inequations are used as secondary conditions for optimization (col 29, lin1 42- col 30 line 7), and wherein the proportional traffic volume via individual links of the network is used to establish the relationship between the traffic volume between pairs of network ingress nodes and network egress nodes and the traffic volume on links of the network (col 29, lin1 42- col 30 line 7).

12. As per claim 17, Kadambi discloses a relationship is established between the traffic volume between pairs of network ingress nodes (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32) and network egress nodes (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32) and the traffic volume on links of the network using inequations (col 29, lin1 42- col 30 line 7), wherein an optimization method for the traffic volume on links of the network is implemented (col 29, lin1 42- col 30 line 7), wherein the inequations are used as secondary conditions for optimization, and wherein the proportional traffic volume via individual links of the network is used to establish the relationship between the traffic volume between pairs of network ingress nodes and network egress nodes (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32) and the traffic volume on links of the network (col 29, lin1 42- col 30 line 7).

13. As per claim 18, Kadambi discloses a relationship is established between the traffic volume between pairs of network ingress nodes and network egress nodes (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32) and the traffic volume on links of the network using inequations (col 29, lin1 42- col 30 line 7), wherein an optimization method for the traffic volume on links of the network is implemented, wherein the inequations are used as secondary conditions for optimization, and wherein the proportional traffic volume via individual links of the network is used to establish the relationship between the traffic volume between pairs of network ingress nodes and network egress nodes (ingress and egress sub module, 20



a, fig 8, col 17, 35-64; col 18, lines 5-32) and the traffic volume on links of the network (col 29, lin1 42- col 30 line 7).

14. As per claim 19, Kadambi discloses a relationship is established between the traffic volume between pairs of network ingress nodes and network egress nodes and the traffic volume on links of the network using inequations (col 29, lin1 42- col 30 line 7), wherein an optimization method for the traffic volume on links of the network is implemented, wherein the inequations are used as secondary conditions for optimization, and wherein the proportional traffic volume via individual links of the network is used to establish the relationship between the traffic volume between pairs of network ingress nodes (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32) and network egress nodes and the traffic volume on links of the network (col 29, lin1 42- col 30 line 7).

15. As per claim 20, Kadambi discloses performing a further admissibility check using a limit value for the traffic volume between the network ingress node and the network egress node for the flow (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

16. As per claim 21, Kadambi discloses performing a further admissibility check using a limit value for the traffic volume between the network ingress node and the network egress node for the flow (ingress and egress sub module, 20 a, fig 8, col 17,

35-64; col 18, lines 5-32).

17. As per claim 22, Kadambi discloses performing a further admissibility check using a limit value for the traffic volume between the network ingress node and the network egress node for the flow (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

18. As per claim 23, Kadambi discloses performing a further admissibility check using a limit value for the traffic volume between the network ingress node and the network egress node for the flow (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

19. As per claim 24, Kadambi discloses performing a further admissibility check using a limit value for the traffic volume between the network ingress node and the network egress node for the flow (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

20.

21. As per claim 25, Kadambi discloses a relationship is established between the traffic volume between pairs of network ingress nodes and network egress nodes and the traffic volume on the links of the network, and wherein values for maximum traffic volume on the links of the network are used to determine limits for the traffic volume between the pairs of network ingress nodes and network egress nodes and limit values

for the traffic routed via the network ingress nodes and the traffic routed via the network egress nodes (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

22. As per claim 26, Kadambi discloses if a link fails (col 62, lines 28-64) , the limits or the limit values for the admissibility check or admissibility checks are reset with the condition that no packets are transmitted via the failed link (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32) .

23. As per claim 27, Kadambi discloses if a link fails (col 62, lines 28-64, the limits or the limit values for the admissibility check or admissibility checks are reset with the condition that no packets are transmitted via the failed link (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

24. As per claim 28, Kadambi discloses for at least one admissibility check, limits or limit values dependent on a class of service of the group of packets are used (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

25. As per claim 29, Kadambi discloses for at least one admissibility check, limits or limit values dependent on a class of service of the group of packets are used (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

26. As per claim 30, Kadambi discloses for a majority of possible incidents limits or limit values respectively are determined, at which the traffic volume remains within a permitted frame, even in the event of an incident, and wherein the limits or limit values are set to the minimum of the values for the incidents under examination (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

27. As per claim 31, Kadambi discloses at least one further relationship is established using an inequation (col 29, lin1 42- col 30 line 7), the further relationship expresses a traffic limitation on a link of the network or a link going away from the network, and wherein the optimization method is performed by using a condition regarding said further relationship (ingress and egress sub module, 20 a, fig 8, col 17, 35-64; col 18, lines 5-32).

### ***Conclusion***

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent 6,028,840

U.S. Patent 6,314,103

U.S. Patent 7,283,518

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD A. SIDDIQI whose telephone number is (571)272-3976. The examiner can normally be reached on Monday -Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MS  
/Larry D Donaghue/  
Primary Examiner, Art Unit 2454